



Billing Code 3510-33-P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

15 CFR Part 748

[Docket No. 120608159-2159-01]

RIN 0694-AF71

Amendment to Existing Validated End-User Authorizations: Hynix Semiconductor China Ltd., Hynix Semiconductor (Wuxi) Ltd., and Boeing Tianjin Composites Co. Ltd. in the People's Republic of China

AGENCY: Bureau of Industry and Security, Commerce.

ACTION: Final rule.

SUMMARY: In this rule, the Bureau of Industry and Security (BIS) amends the Export Administration Regulations (EAR) to revise the existing Authorization Validated End-User (VEU) listings for three VEUs in the People's Republic of China (PRC). Specifically, BIS amends the EAR to change the names of existing VEUs Hynix Semiconductor China Ltd. and Hynix Semiconductor (Wuxi) Ltd. and their respective "Eligible destinations" in the PRC. Also, BIS amends the list of "Eligible items (by ECCN)" that may be exported, reexported and transferred (in-country) to the approved facility of VEU Boeing Tianjin Composites Co. Ltd. (BTC) in the PRC. These changes are prompted by factors arising from the companies' normal course of business, and are not the result of any activities of concern by the companies.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Karen Nies-Vogel, Chair, End-User Review Committee, Bureau of Industry and Security, U.S. Department of Commerce, 14th Street & Pennsylvania Avenue, NW, Washington, DC 20230; by telephone: (202) 482-5991, fax: (202) 482-3991, or e-mail: ERC@bis.doc.gov.

SUPPLEMENTARY INFORMATION:

Background

Authorization Validated End-User

BIS amended the EAR in a final rule on June 19, 2007 (72 FR 33646), creating a new authorization for “Validated end-users” (VEUs) located in eligible destinations to which eligible items may be exported, reexported, or transferred (in-country) under a general authorization instead of a license, in conformance with section 748.15 of the EAR. VEUs may obtain eligible items that are on the Commerce Control List, set forth in Supplement No. 1 to Part 774 of the EAR, without having to wait for their suppliers to obtain export licenses from BIS. Eligible items may include commodities, software, and technology, except those controlled for missile technology or crime control reasons.

The VEUs listed in Supplement No. 7 to Part 748 of the EAR were reviewed and approved by the U.S. Government in accordance with the provisions of section 748.15 and Supplement Nos. 8 and 9 to Part 748 of the EAR. The revisions to Supplement No. 7 to Part 748 set forth in this rule are being made either at the request of the VEUs or pursuant to the U.S. Government’s periodic review of VEU authorizations, and were approved by the End-User

Review Committee (ERC) following the process set forth in Section 748.15 and Supplement No. 9 to Part 748 of the EAR.

Amendment to Existing Validated End-User Authorizations in the PRC

Revision to Names of Hynix Semiconductor China Ltd. and Hynix Semiconductor (Wuxi) Ltd. and Their “Eligible destinations”

In this rule, BIS amends Supplement No. 7 to Part 748 of the EAR to change the names of existing VEUs Hynix Semiconductor China Ltd. and Hynix Semiconductor (Wuxi) Ltd. and the names of the companies’ respective “Eligible destinations” (i.e., facilities) in the People’s Republic of China (PRC). Both companies were designated as VEUs on October 12, 2010 (75 FR 62462).

In this rule, the name Hynix Semiconductor China Ltd. is changed to SK hynix Semiconductor (China) Ltd., and the name of the company’s existing approved “Eligible destination” is changed from Hynix Semiconductor China Ltd. to SK hynix Semiconductor (China) Ltd. In addition, the name Hynix Semiconductor (Wuxi) Ltd. is changed to SK hynix Semiconductor (Wuxi) Ltd., and the name of the company’s existing approved “Eligible destination” is changed from Hynix Semiconductor (Wuxi) Ltd. to SK hynix Semiconductor (Wuxi) Ltd. The addresses of the companies’ respective “Eligible destinations” remain the same. These amendments are prompted by factors arising from the companies’ normal course of business, and are not the result of activities of concern by the companies.

Revision to the List of “Eligible items (by ECCN)” for Boeing Tianjin Composites Co. Ltd.

BIS designated BHA Aero Composite Parts Co. as a VEU on October 19, 2007 (72 FR 59164). On April 29, 2009, BIS amended the authorization by changing the name of the

VEU to Boeing Tianjin Composites Co., Ltd. (BTC) (74 FR 19382). In addition, on February 24, 2012, BIS amended BTC's VEU authorization to correct the address of BTC's eligible destination and revise the list of "Eligible items (by ECCN)" that may be exported, reexported, and transferred (in-country) to BTC (77 FR 10953). In this rule, BIS further revises the list of "Eligible items (by ECCN)" that may be exported, reexported, and transferred (in-country) to BTC. This amendment is prompted by factors arising from BTC's normal course of business, and is not the result of activities of concern by BTC.

BTC's list of "Eligible items (by ECCN)" prior to the publication of this rule was:

1A002.a, 1B001.f, 1C010.b, 1C010.e, 1D001 (limited to "software" specially designed or modified for the "development", "production" or "use" of equipment controlled by 1B001.f), 1E001 (limited to "technology" according to the General Technology Note for the "development" or "production" of items controlled by 1A002.a, 1B001.f, and 1C010.b & .e), 2B001.b.2 (limited to machine tools with accuracies no better than (i.e., less than) 13 microns), 2B001.e, 2D001 (limited to "software," other than that controlled by 2D002, specially designed or modified for the "development", "production" or "use" of equipment controlled by 2B001.b.2 and 2B001.e), and 2D002 (limited to "software" for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a "numerical control" unit, capable of coordinating simultaneously more than 4 axes for "contouring control" controlled by 2B001.b.2 and 2B001.e).

With this rule, BTC's revised list of "Eligible items (by ECCN)" is:

1B001.f, 1D001 (limited to "software" specially designed or modified for the "use" of equipment controlled by 1B001.f), 2B001.b.2 (limited to machine tools with accuracies no better than (i.e., not less than) 13 microns), 2D001 (limited to "software," other than that controlled by 2D002, specially designed or modified for the "use" of equipment controlled by 2B001.b.2), and 2D002 (limited to "software" for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a "numerical control" unit, capable of coordinating simultaneously more than 4 axes for "contouring control" controlled by 2B001.b.2).

Since August 21, 2001, the Export Administration Act (the Act) has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 CFR, 2001 Comp., p. 783

(2002)), as extended most recently by the Notice of August 12, 2011, 76 FR 50661 (August 16, 2011), has continued the EAR in effect under the International Emergency Economic Powers Act. BIS continues to carry out the provisions of the Act, as appropriate and to the extent permitted by law, pursuant to Executive Order 13222.

Rulemaking Requirements

1. Executive Orders 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility. This rule has been determined to be not significant for purposes of Executive Order 12866.

2. This rule involves collections previously approved by the Office of Management and Budget (OMB) under Control Number 0694-0088, “Multi-Purpose Application,” which carries a burden hour estimate of 43.8 minutes to prepare and submit form BIS-748; and for recordkeeping, reporting and review requirements in connection with Authorization VEU, which carries an estimated burden of 30 minutes per submission. This rule is expected to result in a decrease in license applications submitted to BIS. Total burden hours associated with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) (PRA) and OMB Control Number 0694-0088 are not expected to increase significantly as a result of this rule.

Notwithstanding any other provisions of law, no person is required to respond nor be subject to a penalty for failure to comply with a collection of information, subject to the

requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications as that term is defined under Executive Order 13132.

4. Pursuant to the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(B), BIS finds good cause to waive requirements that this rule be subject to notice and the opportunity for public comment because such notice and comment here are unnecessary and contrary to the public interest. In determining whether to grant VEU designations, a committee of U.S. Government agencies evaluates information about and commitments made by candidate companies, the nature and terms of which are set forth in 15 CFR Part 748, Supplement No. 8. The criteria for evaluation by the committee are set forth in 15 CFR 748.15(a)(2).

The information, commitments, and criteria for this extensive review were all established through the notice of proposed rulemaking and public comment process (71 FR 38313, July 2, 2006 (proposed rule), and 72 FR 33646, June 19, 2007 (final rule)). Given the similarities between the authorizations provided under the VEU program and export licenses (as discussed further below), the publication of this information does not establish new policy; in publishing this final rule, BIS simply amends three VEU authorizations by updating the names of two end users and revising the “Eligible items (by ECCN)” of another end user. These changes have been made within the established regulatory framework of the Authorization VEU program. Further, this rule does not abridge the rights of the public or eliminate the public’s option to export under any of the forms of authorization set forth in the EAR.

Publication of this rule in other than final form is unnecessary because the authorization granted in the rule is consistent with the authorizations granted to exporters for individual licenses (and amendments or revisions thereof), which do not undergo public review. Just as license applicants do, VEU authorization applicants provide the U.S. Government with confidential business information. This information is extensively reviewed according to the criteria for VEU authorizations, as set out in 15 CFR §748.15(a)(2). Additionally, just as the interagency reviews license applications, the authorizations granted under the VEU program involve interagency deliberation and result from review of public and non-public sources, including licensing data, and the measurement of such information against the VEU authorization criteria. Given the thorough nature of the review, and in light of the parallels between the VEU application review process and the review of license applications, public comment on this authorization and subsequent amendments prior to publication is unnecessary. Moreover, because, as noted above, the criteria and process for authorizing and administering VEUs were developed with public comments; allowing additional public comment on this amendment to individual VEU authorizations, which was determined according to those criteria, is unnecessary. Finally, allowing for prior public notice and comment is contrary to the public interest because it could cause confusion with the VEU status of the three companies identified in this rule due to the change of VEU names for two of those companies, and the items that may be exported, reexported or transferred (in-country) without a license to one of those companies.

Section 553(d) of the APA generally provides that rules may not take effect earlier than thirty (30) days after they are published in the *Federal Register*. BIS finds good cause to waive the requirement of 5 U.S.C. 553(d)(3) to delay the effectiveness of this regulation, because such a delay is unnecessary. BIS simply amends three VEU authorizations by updating the names of

two end users and revising the “Eligible items (by ECCN)” of another end user. These changes have been made within the established regulatory framework of the Authorization VEU program. Further, this rule does not abridge the rights of the public or eliminate the public’s option to export under any of the forms of authorization set forth in the EAR. Delaying this action’s effectiveness could cause confusion with the VEU status of the three companies identified in this rule due to the change of VEU names for two of those companies, and the items that may be exported, reexported or transferred (in-country) without a license to one of those companies.. Accordingly, it would be unnecessary and contrary to the public interest to delay this rule’s effectiveness.

No other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required under the APA or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable and no regulatory flexibility analysis has been prepared.

List of Subjects in 15 CFR Part 748

Administrative practice and procedure, Exports, Reporting and recordkeeping requirements.

Accordingly, Part 748 of the EAR (15 CFR Parts 730 – 774) is amended as follows:

PART 748 – [AMENDED]

1. The authority citation for 15 CFR Part 748 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; E.O. 13222, 66 FR 44025, 3 CFR, 2001 Comp., p. 783; Notice of August 12, 2011, 76 FR 50661 (August 16, 2011).

2. Supplement No. 7 to Part 748 is amended in “China (People’s Republic of)” by:

- a. Revising the entry for “Boeing Tianjin Composites Co. Ltd.”;
- b. Removing the entries for “Hynix Semiconductor China Ltd.”, and “Hynix Semiconductor (Wuxi) Ltd.”; and
- c. Adding new entries for “SK hynix Semiconductor (China) Ltd.”, and “SK hynix Semiconductor (Wuxi) Ltd.” in alphabetical order.

The revisions and additions read as follows:

SUPPLEMENT NO.7 TO PART 748 - AUTHORIZATION VALIDATED END-USER (VEU); LIST OF VALIDATED END-USERS, RESPECTIVE ITEMS ELIGIBLE FOR EXPORT, REEXPORT AND TRANSFER, AND ELIGIBLE DESTINATIONS

| Country | Validated end user | Eligible items (by ECCN) | Eligible destination | Federal Register citation |
|-----------------|--------------------|--------------------------|----------------------|---------------------------|
| China (People’s | ***** | ** | | |

| Republic of) | | | | |
|--------------|------------------------------------|--|--|--|
| | ***** | ** | | |
| | Boeing Tianjin Composites Co. Ltd. | 1B001.f, 1D001 (limited to “software” specially designed or modified for the “use” of equipment controlled by 1B001.f), 2B001.b.2 (limited to machine tools with accuracies no better than (i.e., not less than) 13 microns), 2D001 (limited to “software,” other than that controlled by 2D002, specially designed or modified for the “use” of equipment controlled by 2B001.b.2), and 2D002 (limited to “software” for electronic devices, even when residing in an electronic device or system, enabling such devices or systems to function as a “numerical control” unit, capable of coordinating simultaneously more than 4 axes for “contouring control” controlled by 2B001.b.2). | Boeing Tianjin Composites Co. Ltd., No. 4–388 Hebei Road, Tanggu Tianjin, China. | 72 FR 59164, 10/19/07. 74 FR 19381, 4/29/09. 77 FR 10953, 2/24/12. 77 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]. |

| | | | | |
|--|---|--|--|--|
| | ***** | ** | | |
| | SK hynix Semiconductor (China) Ltd. | 3B001.a, 3B001.b, 3B001.c, 3B001.d, 3B001.e, and 3B001.f. | SK hynix Semiconductor (China) Ltd., Lot K7/K7-1, Export Processing Zone, Wuxi, Jiangsu, China. | 75 FR 62462, 10/12/10. 77 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]. |
| | SK hynix Semiconductor (Wuxi) Ltd. | 3B001.a, 3B001.b, 3B001.c, 3B001.d, 3B001.e, and 3B001.f. | SK hynix Semiconductor (Wuxi) Ltd., Lot K7/K7-1, Export Processing Zone, Wuxi, Jiangsu, China. | 75 FR 62462, 10/12/10. 77 FR [INSERT FR PAGE NUMBER AND DATE OF PUBLICATION IN THE FEDERAL REGISTER]. |
| | ***** | ** | | |

DATED: June 29, 2012

Kevin J. Wolf

Assistant Secretary for

Export Administration

[FR Doc. 2012-16724 Filed 07/06/2012 at 8:45 am; Publication Date: 07/09/2012]